IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 240 of 2005

BHAGWATILAL & ANR
V/S
SHRI SHANTI SEVA KUTI & ORS

Mr.MS SINGHVI, Mr. HEMANT DUTT, Mr.RAJAT DAVE, for the appellant / petitioner

Mr. CS KOTWANI for Mr. MC BHOOT, for the respondent

Date of Order : 2.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties, perused the impugned judgments, and the record.

The whole long and short of the suit is, that after death of the then President, the defendant No.2 is working as a self styled president, while the plaintiffs are public spirited persons. Then in para 4, 5, 6 and 7 relevant provisions of the Constitution of the Society have been quoted, and in para 9, it is contended that elections of the President, and other office bearers, have not been got conducted in accordance with the Constitution, since long. Then certain allegations have been made about misfeasance. However, decree has been prayed for a mandatory injunction against the defendant No.2, to direct **HIM** to get the elections conducted, in accordance with the

Constitution of the Society, and for that purpose, Commissioner/Receiver be appointed, and it be ensured. Then other prayer made is, to direct the defendant No.2 to hand over the accounts, and details of the property, to the receiver, and the amount to be deposited in the bank. The plaintiff no. 1 claims himself to be the member of the Management Board, and plaintiff No.2 claims to be a citizen of Banswara, having faith and interest in mental, physical and economic development of the public, and is a public spirited person, and is interested in management of the institution.

The learned trial Court decreed the suit, to the effect, that it issued injunction against the defendants to have the elections of the society conducted in accordance with the Constitution, and for conducting election, Advocate Commissioner/Receiver was appointed, and defendant No.2 was directed to give all details of the properties, account books etc. to the Advocate Commissioner, and to deposit the amounts with the bank.

Learned lower appellate Court has partly modified the decree, and has directed the defendant No.2 to get the elections conducted, and various other directions have been given viz., to nominate members within six months in accordance with the spirit of para 7 of the Constitution. Then a direction has been given to stop the membership of

such persons, who are not complying with, or whose membership is not in accordance with the spirit of para 7 of the Constitution. Then after the group of members being so constituted, meeting should be convened within two months under para 10, and before that Committee he should submit the account of income and expenditure for the entire tenure of the defendant No.2. Then a Management Board should be constituted, for which written resolution should be adopted, and for that purpose, one of the respectable members should be appointed as Returning Officer by proper resolution in the minutes, in the event of election being not possible by consciences, it should be conducted by secret ballot, in a democratic manner. Thereafter, within 10 days, the meeting of the Management Board should be called, accounts be taken, and resolutions be taken for future development programs. It has also been directed, that the details of the accounts should be submitted by the new Management Board, and President, at the earliest to the Registrar, Cooperative Societies.

It is contended by learned counsel for the appellant, that the defendant No.2 is the most interested person, and biased, as he is enjoying the property, and is committing acts of misfeasance, therefore, he could not have been directed to have the elections conducted. Then it has also been contended, that the directions given by the learned lower appellate Court for enrollment of members

etc. is beyond the scope of the suit, and therefore, they could not have been given.

I have considered the submissions, and find, that so far as the part of the order directing defendant No.2 himself to undertake the things, is concerned, that is fully in accordance with the prayer made by the plaintiff himself in para 17(क) of the plaint. So far as the prayer made in the plaint for appointment of Commissioner/Receiver for this purpose is concerned, obviously if the decree is not complied with, it will be executed in accordance with the provisions of Order 21, and for that, necessary steps would obviously be taken by the Court. So far as the other directions given by the learned lower appellate Court are concerned, true it is that on the face of it, they look to be beyond the scope of the prayer made in the suit, and the pleadings taken in the suit, but then, in my view, a bare reading of the Constitution of the society, being Ex.1, does show, that the membership of the society is conditioned by very many stringent requirements, and as is the allegation of the plaintiff, that defendant No.2 is enjoying exclusively, the management and properties of the institution since 1985 i.e. more than 20 years, in absence of any material being there to show, as to who are/were the members of the society, it is reasonable to assume, that many of the members, who were initially the members, must have expired, as is the case of the original founder

president, and subsequent presidents. Likewise, looking to the present trend and way of living, it is reasonable to assume, that hardly sufficient number of members would be there, who would be complying with the conditions of membership, contained in para 7 of the Constitution, which include spinning of cotton thread to a particular extent regularly, and to submit a report, and stipulates that if such report is not submitted for six months, the membership will automatically come to an end. In these circumstances, in order to ensure, that the society does continue to exist, and does function properly, the directions given by the learned lower appellate Court, are imminently just and proper.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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